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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM LOUIS THOMA, JR.,

Defendant and Appellant.

B255791

(Los Angeles County
Super. Ct. No. MA059281)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Thomas R. White, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

William Louis Thoma, Jr. appeals from the judgment entered following his plea of no contest to driving under the influence of alcohol or drugs within 10 years of previously having been convicted of driving under the influence of alcohol or drugs (Veh. Code, § 23550.5, subd. (a)) and his admissions he served prison terms for four prior convictions within the meaning of Penal Code section 667.5, subdivision (b). The trial court sentenced Thoma to four years eight months in state prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*¹

California Highway Patrol Officer Joshua Wupperfeld had been a sworn peace officer for over 10 years and had extensive experience in the investigation of cases involving driving under the influence. Wupperfeld was made aware of such a case at approximately 8:25 a.m. on February 2, 2013. It occurred in the area of Avenue K and 90th Street East in Palmdale. Wupperfeld ultimately acted as a drug recognition evaluator (D.R.E.) in the matter, which involved the defendant and appellant, Thoma.

Wupperfeld first spoke with Officer Hider, who had initially observed Thoma “slumped over the wheel” of his parked car. When Hider then pulled her patrol car behind Thoma’s car, got out of her car and contacted Thoma, she noticed he appeared “confused, disoriented, had extremely slurred speech [and] appeared [to be] intoxicated.” After her initial contact with him, Thoma abruptly sat up and began to pull away in his car. Hider had to “yell at him[,] knock on the driver’s side door and instruct him to put the [car] in park, before he stopped.” When the vehicle came to a stop, Hider noticed the odor of marijuana coming from the car and saw two marijuana cigarettes sitting on the center console. The officer then noted Thoma’s eyes were red, his pupils were constricted and, when he attempted to get out of the car, he “shuffl[ed] his feet and [was] unable to walk in a straight path.”

After Thoma denied having smoked marijuana, Hider performed a number of field sobriety tests, including a “horizontal gaze nystagmus test.” Thoma exhibited all the

¹ The facts have been taken from the transcript of the preliminary hearing.

symptoms associated with the test, which indicated he was under the influence of a “central nervous system depressant.” When Hider gave Thoma the Rhomberg Balance Test, he “swayed” from front to back and when she asked him to stand upright on one leg, Thoma was unable to do so. After Thoma failed a number of other tests, Hider tested the alcohol concentration of his blood. When the result was .00 percent, Hider concluded Thoma had been driving under the influence of other drugs.

Wupperfeld then interviewed Thoma. In addition to his “slurred speech,” Thoma continuously nodded his head forward and back and closed his eyes as if he were about to go to sleep. Thoma’s responses to questions were, in many instances, “unintelligible,” “indiscernible” and “nonsensical.” The answers Thoma gave were unrelated to the questions Wupperfeld had asked. However, when Wupperfeld asked Thoma if he had any medical problems, Thoma indicated he suffered from Type II diabetes. Wupperfeld asked Thoma if he needed any sort of treatment and Thoma indicated he did not. In any event, Wupperfeld gave to Thoma a tube of glucose in case he was suffering from low blood sugar. Although Thoma self-administered one-quarter of the tube, there was no improvement in his behavior.

After giving to Thoma a series of additional tests, including a “walk-and-turn test” and the “finger-to-nose test,” Wupperfeld concluded Thoma “exhibited signs and symptoms of intoxication.” Thoma also had “several old puncture wounds and abscessed scars on his inner arms” and “[h]is fingertips were blackened and burned,” indicating he had smoked from a glass pipe. A blood test revealed some of the same narcotics found by Officer Hider when she searched Thomas’s car, including “Norco, which is hydrocodone,” and oxycontin pills.

After being questioned, Thoma was eventually admitted to a hospital. Although Wupperfeld did not know why Thoma was placed in a hospital, he was informed that Thoma had suffered both head and back injuries while he had been in the army. Thoma apparently had a prescription for Vicodin pills.

The People presented, for purposes of the preliminary hearing only, “an 18-page certified rap sheet” which indicated Thoma previously had been convicted of, among other offenses, two counts of driving a vehicle while under the influence of alcohol.

2. Procedural history.

Following the presentation of evidence at the preliminary hearing, on July 8, 2013 Thoma indicated he had “an issue with [his] attorney.” After the trial court “clear[ed] the courtroom” so that a *Marsden*² hearing could be held, Thoma stated he did not believe his counsel was properly representing him. Thoma indicated “a private attorney . . . [he was] trying to hire to put all of [his] cases together in [the] Burbank court,” a Mr. Davenport, had told him the Lancaster Court, as well as other courts in which he had cases pending, were “under investigation by the federal system.” When Thoma asked his current counsel, a deputy public defender, to have other allegations pending against him in other courts moved because of the investigation, counsel told him that when she looked into the possibility, the court “laughed at [Thoma].” The trial court, which obviously had not heard of any such investigation, responded: “This court is under investigation? What are you talking about?” The court continued: “[T]his is an open case in this jurisdiction, Mr. Thoma. The case will be handled at this point in this courthouse.”

When Thoma again indicated counsel had told him the court had laughed at him, the trial court inquired: “[W]hat’s that have to do with [your present counsel]?” Thoma stated: “I felt like . . . I wasn’t represented properly. Why would they laugh at something so serious as that?” In addition, Thoma felt that neither the trial courts nor his counsel were “working with [him] on the time issue.” He believed the crimes alleged did not warrant the length of the sentences various trial courts were considering imposing. After the trial court indicated defense counsel was not the one who “dictate[d] the offer” and that it came “from the prosecution,” Thoma again simply stated he did not feel as though he were being represented properly.

² *People v. Marsden* (1970) 2 Cal.3d 118.

The trial court then asked defense counsel to summarize her experience and to indicate what she had done so far with regard to her representation of Thoma. Counsel stated she had been a public defender since 2006 and had represented adults and juveniles charged with both felonies and misdemeanors. Counsel had consulted with Thoma several days earlier and they had discussed the facts of the case. After she had answered all of his questions, he had “requested that [she] make a motion to change venue” and she had informed him it was up to her whether to make such a motion. If counsel believed a motion was frivolous, she would not make it. In addition, counsel had told Thoma, not that *he* had been laughed at, but that *she* had been laughed at. During an informal discussion regarding Thoma’s request to change venue, counsel was laughed at by the district attorney. Although counsel was aware of the fact Thoma had other cases pending elsewhere in the county, she believed that issue would be better dealt with at a later time.

In denying Thoma’s *Marsden* motion, the trial court stated: “I have known [defense counsel] for a very long time. I never once ever [saw] her laugh at a client or laugh at anything a client [had] to say. She may disagree. She has certain obligations. You have certain rights. She’ll work with you [¶] But she has clarified that it was the prosecutor, not her, and it was not the judge that may have laughed in response to the request to consolidate.” “So based on that, the court finds defense counsel has properly represented the defendant and will continue to do so.”

On July 16, 2013, an information was filed charging Thoma with driving under the influence of alcohol or drugs within 10 years of previously having been convicted of driving under the influence of alcohol or drugs (Veh. Code, § 23550.5, subd. (a)) (count 1), two counts of possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) (counts 2 and 3), and driving when the privilege had been suspended or revoked (Veh. Code, § 14601.1, subd. (a)) (count 4). It was further alleged as to counts 1, 2 and 3 that Thoma had suffered four prior convictions for which he had served prison terms (Pen. Code, § 667.5, subd. (b)).

On July 22, 2013, Thoma waived arraignment, a reading of the information and a statement of his constitutional rights and entered pleas of not guilty to counts 1 through 4.

At proceedings held on October 17, 2013, defense counsel made an “off-the-record request for [a] continuance.” In response, the trial court indicated it had “stated for the record” on September 18, 2013 that the court had granted defense counsel’s request for a continuance, but the court would give no further continuances unless it was provided with a written Penal Code section 1050 motion.³ As counsel had filed no such motion and it did not appear to the trial court there was “good cause,” the court trailed the matter only to October 31, 2013.

At a hearing held on March 24, 2014, the trial court indicated it was its understanding “there [was] going to be [a] resolution of the case.” Thoma had agreed to enter a plea of no contest to count 1, driving under the influence of alcohol or drugs within 10 years of previously having been convicted of driving under the influence of alcohol or drugs, and to admit having served prison terms for four prior offenses. In exchange for his plea and admissions, the charges alleged in counts 2, 3 and 4 would be dismissed and the trial court would sentence Thoma to one-third the midterm, or eight months for his conviction of count 1 and one year for each of the four admitted priors, or a total of four years eight months in prison. The term would be served consecutively to terms Thoma was already serving in other matters.

The prosecutor informed Thoma that, by entering the plea, he was giving up his right to a jury or court trial, his right to confront and cross-examine the witnesses against him, his right to use the subpoena power of the court to present a defense and his right to remain silent. The prosecutor also made certain Thoma understood the consequences of his plea. For example, the prosecutor informed Thoma that, after completion of his sentence he would be placed on parole and if he violated a term of his parole he could be sent back to prison, that his plea to a felony could be used to increase or enhance a

³ Penal Code section 1050, subdivision (b) provides in relevant part: “To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary”

sentence imposed for any future crime of which he might be convicted, that if he were not a citizen of the United States his conviction could result in deportation, exclusion from the United States or denial of naturalization and that, as a result of his plea, he could no longer possess a firearm. Thoma was told that, in addition to his time in prison, he would be ordered to pay certain fines and fees and, finally, because Thoma was pleading to driving while under the influence of alcohol or drugs if, in the future, he drove “under the influence of alcohol or drugs and as a result someone [was] killed, [he] could be charged with murder.”

After indicating he understood the consequences of entering a plea and admitting his prior convictions and prison terms, Thoma pled no contest to “count 1, a violation of Vehicle Code section 23550.5[, subdivision] (a), a felony, commonly known as driving under the influence within ten years” of previously having been convicted of driving under the influence of alcohol or drugs or vehicular manslaughter and admitted that, within the previous 10 years, he had been convicted of four Vehicle Code violations for which he served prison terms within the meaning of Penal Code section 667.5, subdivision (b).

The trial court found Thoma had “expressly, knowingly, understandingly, intelligently, explicitly and voluntarily waived his constitutional rights” and his plea and admissions had been made “freely and voluntarily.” The court then sentenced Thoma to the previously agreed upon term of four years eight months in prison, imposed a \$280 restitution fine (Pen. Code, § 1202.4, subd. (b)), a suspended \$280 parole revocation restitution fine (Pen. Code, § 1202.45), a \$40 court operations assessment (Pen. Code, § 1465.8, subd. (a)(1)) and a \$30 conviction assessment (Gov. Code, § 70373). With regard to a \$390 penalty assessment, Thoma could choose to serve 13 days in any penal institution in lieu of the fine. In the interests of justice, the trial court then dismissed counts 2, 3, and 4.

On April 23, 2014, Thoma filed a timely notice of appeal from the judgment. In addition, he requested a certificate of probable cause because the trial court used his criminal history to impose sentences for his prior convictions and prison terms.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed August 13, 2014, the clerk of this court advised Thoma to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.